

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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6 BIANCA M. McMURRAY, et al.,)
7)
8 Plaintiffs,)
9)
10 v.) 2:07-cv-01188-RLH-LRL
11 LAS VEGAS METROPOLITAN POLICE)
12 DEPARTMENT,)
13)
14 Defendant.)
15)

REPORT & RECOMMENDATION

On September 25, 2007, attorney Carl E.G. Arnold filed a Motion to Withdraw as Counsel of Record (#6) for plaintiffs. The court issued an order scheduling a hearing for October 9, 2007. Plaintiffs Tracy McMurray Jr., Bianca McMurray and Jackie Strader were ordered to attend the hearing.

On October 9, 2007, the hearing was held. Mr. Arnold was present, as was Lyssa Anderson for defendants. None of the plaintiffs appeared. In support of his motion to withdraw Mr. Arnold advised the court that he could no longer represent the plaintiffs because they had been untruthful with him; they had declined to provide him with key evidence that he needed; and he had lost contact with them. The court granted Mr. Arnold's motion to withdraw, and directed him to provide the court and Ms. Anderson with all possible contact information he may have for the plaintiffs. The court scheduled a hearing for October 30, 2007, at 2:30 p.m. Because Mr. Arnold believed the plaintiffs may be in Florida, the court directed that the hearing be conducted telephonically.

On October 12, 2007, Mr. Arnold's office provided the Clerk's Office with last known addresses and phone numbers for the plaintiffs. On the same day the court's deputy courtroom clerk placed a call

to Tracy McMurray Jr.'s last known phone number -- 954-496-0653 -- and spoke with Mr. McMurray. She informed Mr. McMurray, who indicated that he was currently living in Las Vegas, that Mr. Arnold had been permitted to withdraw as Mr. McMurray's attorney, and that the court had set a follow-up telephonic hearing for October 30, 2007, at 2:30 p.m., which Mr. McMurray was required to attend.¹ Mr. McMurray confirmed that he would participate in the hearing and could be reached again at 954-496-0653. The courtroom deputy clerk also mailed a copy of the order scheduling the October 30 hearing to the address in Las Vegas provided by Mr. McMurray.

At 2:30 p.m. on October 30, 2007, the court attempted to conduct the follow-up telephonic hearing concerning the status of counsel for plaintiffs. Ms. Anderson appeared telephonically for the defendant. The courtroom deputy clerk called Mr. McMurray Jr.'s number and reached his voice mail. She left a message regarding the hearing, and called the number again ten minutes later. She again reached Mr. McMurray's voice mail and left another message instructing him to call the undersigned's chambers as soon as he received her message. Mr. McMurray did not call.

On October 31, 2007, the court issued a minute order requiring Mr. McMurray to explain why he had not complied with the court's order to attend the hearing on October 9, 2007 and to participate in the telephonic hearing on October 30, 2007. The court warned Mr. McMurray that his failure to respond to the order or to provide a satisfactory explanation for his failure to comply with the previous orders of this court could lead to a recommendation by the undersigned that the presiding U.S. District Judge dismiss this case with prejudice due to plaintiffs' failure and refusal to comply with the orders of the court and his failure to prosecute this action. The court ordered Mr. McMurray to send a letter to the undersigned U.S. Magistrate Judge at George U.S. Courthouse, 333 Las Vegas Boulevard South, Room 3014, Las Vegas, Nevada 89101, not later than November 16, 2007, explaining why he should not be sanctioned for his failure to attend or participate in the hearings on October 9 and October 30,

¹ Tracy McMurray, Jr., who the court understands to be a young adult, is the son of the decedent, Tracy McMurray, and the older brother of co-plaintiff Bianca McMurray, who the court understands to be a teenager. Tracy McMurray, Jr. has indicated that he speaks for his sister Bianca.

1 2007. The court scheduled a hearing for November 27, 2007, at 3:00 p.m., in Courtroom 3C, to
2 consider the matter of sanctions, and expressly ordered Mr. McMurray to personally attend the hearing.
3 A copy of the order was sent to Mr. McMurray's address by certified mail, return receipt requested. *See*
4 Document 14.

5 The court convened the next scheduled hearing on November 27, 2007 at 3:07 p.m. Ms.
6 Anderson appeared telephonically for the defendant. Mr. McMurray did not appear personally, and did
7 not call in either to the courtroom or to chambers. The court therefore issued to Mr. McMurray an order
8 to show cause why the complaint should not be dismissed with prejudice by virtue of his repeated
9 noncompliance with orders of the court and his failure to participate in these proceedings. The court
10 set a deadline of December 14, 2007 by which Mr. McMurray was to submit a show cause
11 memorandum, and scheduled a hearing for December 18, 2007, at 1:30 p.m., in the undersigned's
12 courtroom. The Clerk's Office was directed to send a copy of the order to Mr. McMurray by certified
13 mail, return receipt requested, which it did. The Postal Service has not returned the mail.

14 On December 18, 2007, Ms. Anderson appeared for the defendant. Mr. McMurray, who again
15 failed to submit a show cause memorandum, neither appeared personally nor contacted the court by
16 telephone. The court has extended to him every opportunity to participate in these proceedings. On
17 each occasion he has ignored the orders of the court. This Magistrate Judge is constrained to conclude
18 that plaintiffs have no interest in pursuing this litigation, and that Mr. McMurray's noncompliance with
19 this court's orders borders on the contemptuous.

20 **RECOMMENDATION**

21 For the reasons set forth above, it is the recommendation of the undersigned U.S. Magistrate
22 Judge that the complaint be dismissed with prejudice.

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NOTICE

Pursuant to LR IB 3-2(a), any objections to this Report and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days from receipt of this Notice.

DATED this 20th day of December, 2007.

L.P. Lewis

**LAWRENCE R. LEAVITT
UNITED STATES MAGISTRATE JUDGE**